

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL B. CHLADEK and	:	CIVIL ACTION
MARIE CHLADEK	:	
	:	
v.	:	
	:	
DAVID MILLIGAN, et al.	:	NO. 97-0355

**MEMORANDUM AND ORDER**

HUTTON, J.

October 22, 1998

Presently before this Court are the Plaintiffs' Motions in Limine Regarding the following: Criminal and Parole Background of George Chladek, Sr., George Chladek Jr., and Joseph Davis (Docket No. 69), Michael Chladek's Drug Use History (Docket No. 70), and Michael Chladek's Criminal and Parole Background (Docket No. 71); and the Defendants' response thereto (Docket No. 72).

**I. BACKGROUND**

On September 17, 1996, David Milligan, Donna Henry, David M. Dettinburn, John E. Founds, Thomas J. Micek, and two unknown persons, all state parole agents (collectively referred to as "state parole agents") arrested Michael Chladek from his home for being in violation of parole. The state parole agents allege that Michael Chladek violated the terms of his parole by associating with two convicted felons, his father, George Chladek, Sr. and brother, George Chladek, Jr. The Plaintiffs concede that Michael Chladek's father and brother have criminal pasts, and that Michael

Chladek's parole prevented him from associating with such people. Michael Chladek and his mother, Marie Chladek, (collectively referred to as "Plaintiffs") allege that Michael Chladek was beaten excessively during his arrest, and that Marie Chladek also suffered injuries caused by the state parole agents.

On January 16, 1997, the Plaintiffs filed the instant suit seeking compensatory damages for their injuries.<sup>1</sup> On May 21, 1998, Defendants Pennsylvania Board of Probation and Parole and the six parole agents Milligan, Henry, Dettinburn, Founds, Knorr and Micek (collectively referred to as "Defendants") filed their pretrial memorandum. In their memorandum, the Defendants indicated that they would use at trial the following evidence: the criminal and parole records of George Chladek, Jr. and Joseph Davis;

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1. In their Amended Complaint, the plaintiffs named the following parties as defendants: (1) the Commonwealth of Pennsylvania; (2) the Pennsylvania Board of Probation and Parole (the "Board"); (3) State Parole Agent David Milligan ("Milligan"); (4) State Parole Agent Donna Henry ("Henry"); (5) State Parole Agent David M. Dettinburn ("Dettinburn"); (6) State Parole Agent John E. Founds ("Founds"); (7) State Parole Agent Thomas J. Micek ("Micek"); (8) two unknown state parole agents; (9) the Pennsylvania Department of Corrections; (10) Prisoner Commissioner Martin Horn ("Horn"); (11) Deputy Prison Commissioner for Central Region Jeffrey Beard ("Beard"); (12) Superintendent Donald Vaughn ("Vaughn"); and (13) four unknown Graterford Prison guards. The plaintiffs alleged that the defendants' conduct violated Sections 1983, 1985(3), 1986, and 1988, under the First, Fourth, Eighth and Fourteenth Amendments. Moreover, the plaintiffs asserted claims for Assault and Battery (Count VI), Malicious Abuse of Process (Count VII), False Arrest (Count VIII), False Imprisonment (Count IX), and Intentional Infliction of Emotional Distress (Count X).

On July 21, 1997, this Court granted the Uncontested Motion of Defendants Commonwealth of Pennsylvania, Pennsylvania Department of Corrections, Horn, Beard and Vaughn to Dismiss the Plaintiffs' Amended Complaint. On January 28, 1998, this Court dismissed all claims against Defendant Pennsylvania Board of Probation and Parole. Moreover, the Court dismissed all claims against Defendants Milligan, Henry, Dettinburn, Founds, and Knorr in their official capacities and all claims against Defendants Milligan, Henry, Dettinburn, Founds, and Knorr based on 42 U.S.C. §§ 1985 and 1986.

Plaintiff Michael Chladek's drug use history; and Plaintiff Michael Chladek's criminal and parole background. On June 29, 1998, the Plaintiffs filed the present motions seeking to preclude the use of such evidence. On July 10, 1998, the Defendants filed their response in opposition to the Plaintiffs' motions. For the foregoing reasons, the Plaintiffs' motions are denied in part and granted in part.

## **II. DISCUSSION**

### **A. Criminal and Parole Background of George Chladek, Sr., George Chladek Jr. and Joseph Davis**

In their first Motion in Limine, the Plaintiffs seek to preclude "evidence of the criminal or parole history [of] George Chladek, Sr., George Chladek, Jr., and Joseph Davis." (Pls.' Mot. in Lim. Regarding the Criminal and Parole Background of George Chladek, Sr., George Chladek, Jr. and Joseph Davis at 4.) The Plaintiffs argue that the criminal and parole background of these individuals is irrelevant to the charges brought against the Defendants, or in the alternative, such evidence is facially prejudicial and of no probative value. The Court will deal with evidence pertaining to each individual in turn.

#### **1. George Chladek, Sr.**

The Defendants have indicated that they do not intend to introduce evidence concerning the criminal and parole history of Michael Chladek's father, George, Sr., and marked no exhibits for

this purpose. (Defs.' Mem. of Law in Opp'n at 9.) The Defendants explain that George Chladek, Sr. is deceased. (Id. at 10.) Accordingly, the Plaintiffs' Motion in Limine Regarding Criminal and Parole Background of George Chladek, Sr. is denied as moot.

## **2. George Chladek, Jr.**

The Defendants allege that the purpose of introducing evidence concerning the criminal and parole history of Michael Chladek's brother, George, Jr., is not to attack his credibility as a witness.<sup>2</sup> Instead, the Defendants argue that such evidence is relevant to show that Michael Chladek and his family were "intimately familiar with parole procedures and rules." (Defs.' Mem. of Law in Opp'n at 9.) The Defendants argue additionally that "it is important for the Parole Agents to show that Michael Chladek was properly arrested. (Id. at 10.) Finally, the Defendants allege that evidence of George Chladek, Jr.'s criminal and parole background is not prejudicial to the jury because George, Jr. is not expected to testify. (Id.) This Court must disagree.

Under Federal Rule of Evidence 401, "'relevant evidence' means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence."

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<sup>2</sup> Evidence Rule 609 does not apply since the Defendants allege that their purpose of introducing such evidence is not to impeach George, Jr.'s credibility. See Fed. R. Evid. 609(a) ("For the purpose of attacking the credibility of a witness, . . ."). The Defendants state that they do not intend to call George, Jr. as a witness.

"The standard of relevance established by [Rule 401] is not high,' Carter v. Hewitt, 617 F.2d 961, 966 (3d Cir. 1980), and once the threshold of logical relevancy is satisfied the matter is largely within the discretion of the trial court, see Hamling v. United States, 418 U.S. 87, 124-25, 94 S. Ct. 2887, 2911, 41 L.Ed.2d 590 (1974)." United States v. Steele, 685 F.2d 793, 808 (3d Cir.), cert. denied, Mothon v. United States, 459 U.S. 908 (1982).

Under Federal Rule of Evidence 403, relevant "evidence may be excluded if its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury." "Rule 403 does not act to exclude any evidence that may be prejudicial, but only evidence the prejudice from which substantively outweighs its probative value. Prejudice within the meaning of Rule 403 involves identifying a special damage which the law finds impermissible." Charles E. Wagner, Federal Rules of Evidence Case Law Commentary, 145 (1996-97) (footnotes omitted).

In the instant matter, the Defendants argue that the evidence is relevant because "[t]he terms of Michael Chladek's parole prohibited him from associating with any other convicted felon and/or parolee." (Defs.' Mem. of Law in Opp'n at 10.) The Defendants advise the Court that "in order to maintain a proper defense to this case, the Parole Agents need to introduce evidence that Michael Chladek was lawfully arrested for violating his

parole. (Id.) This evidence is certainly relevant, because, it makes it more probable that the Plaintiffs had knowledge of parole procedures and that the state parole agents were lawfully present at the Chladeks' residence when they came to arrest Michael Chladek.

Nonetheless, evidence of George Chladek Jr.'s criminal and parole background is precluded on the basis that "its probative value is substantially outweighed by the danger of unfair prejudice, confusion of the issues, or misleading the jury...." Fed R. Evid. 403. Because evidence of Michael Chladek's criminal and parole background sufficiently establishes that the Plaintiffs were intimately familiar with parole procedures and rules, and the Plaintiffs concede that Michael Chladek's parole prevented him from associating with his father and brother, any evidence regarding George Chladek, Jr.'s criminal and parole history is of no probative value. Accordingly, the Plaintiffs' Motion in Limine Regarding George Chladek, Jr.'s Criminal and Parole Background is granted.

### **3. Joseph Davis**

Joseph Davis is a convicted felon who was arrested for violating his parole and was transported to Graterford prison with Michael Chladek on September 17, 1996. Mr. Davis was also Michael Chladek's cell mate at Graterford for a short period of time. Mr. Davis is expected to testify about Mr. Chladek's medical condition.

**a. Conviction for Theft**

Federal Rule of Evidence 609(a) allows prior convictions to be used for impeachment purposes in two circumstances:

[T]he crime (1) was punishable by death or imprisonment in excess of one year under the law under which the witness was convicted, and the court determines that the probative value of admitting this evidence outweighs its prejudicial effect to the defendant, or (2) involved dishonesty or false statement, regardless of the punishment.

Fed. R. Evid. 609(a). Here, Joseph Davis's conviction for theft passes muster under subdivision 2 of the rule. The crime of theft has been held in this Circuit to involve dishonesty. United States v. Fromal, 733 F. Supp. 960, 973 (E.D.Pa. 1990) (holding that bank robbery involved dishonesty); as has larceny, United States v. Remco, 388 F.2d 783, 786 (3rd Cir. 1968) (recognizing that "larceny . . . involves moral turpitude"); as has burglary, United States v. Bianco, 419 F. Supp. 507, 509 (E.D.Pa. 1976) ("dishonesty" was understood to "include the crimes of armed robbery and breaking and entering"), aff'd mem., 547 F.2d 1164 (3rd Cir. 1977).

The Plaintiffs are misguided to argue, in the alternative, that such evidence is facially prejudicial and of no probative value. "If the prior conviction involved dishonesty or false statements, the conviction is automatically admissible

insofar as the district court is without discretion to weigh the prejudicial effect of the proffered evidence against its probative value." Walden v. Georgia-Pacific Corp., 126 F.3d 506, 523 (3d Cir. 1997), cert. denied, 118 S. Ct. 1516 (1998) (citing Cree v. Hatcher, 969 F.2d 34, 37 (3d Cir. 1992); United States v. Wong, 703 F.2d 65, 68 (3d Cir. 1983)). Because Joseph Davis's conviction for theft falls within the ambit of 609(a)(2), this Court "[has] no discretion to exclude [such] evidence . . . when used for impeachment purpose." Bianco, 419 F. Supp. at 509 (citing Gordon v. United States, 383 F.2d 936 (D.C. Cir. 1967)). Accordingly, the Plaintiffs' request to preclude the Defendants from presenting any evidence of Joseph Davis's prior convictions for theft is denied.

**b. Parole Violations**

In their response to the instant motions, the Defendants argue that evidence of Joseph Davis's history of repeated parole violations is relevant "to impeach Mr. Davis's credibility." (Defs.' Mem. of Law in Opp'n at 11.) Moreover, the Defendants contend that such evidence would not prejudice the Plaintiffs. (Id.) This Court agrees.

Evidence of Mr. Davis's repeated parole failures is relevant to impeach the credibility of Mr. Davis. The evidence would make it more probable that Mr. Davis possesses a bias against the parole agents. The Plaintiffs failed to articulate how such probative value was substantially outweighed by unfair prejudice so



as to preclude admission. Fed. R. Evid. 403, 404(b), 28 U.S.C. (1994). Accordingly, the Court finds that the probative value outweighs any prejudice to the Plaintiffs, and, thus, the Plaintiffs' Motion in Limine Regarding Joseph Davis's Parole Background is denied.

**B. Plaintiff Michael Chladek's Drug Use History**

In their second Motion in Limine, the Plaintiffs seek to preclude "evidence of Michael Chladek's prior drug usage." (Pls.' Mot. in Lim. Regarding Michael Chladek's Drug Use History at 3-4.) The Plaintiffs argue that evidence of Plaintiff Michael Chladek's drug use history is not relevant. (Id. at 1.) Alternatively, if the evidence is relevant, the Plaintiffs contend that "Michael Chladek's drug past will serve no other purpose than to prejudice the listeners and discredit otherwise accurate and truthful testimony," because "[f]or purposes of this trial, there is nothing as severe as a prior drug conviction to use against Michael Chladek." (Id. at 2.) The Court reserves judgment on the admissibility of Michael Chladek's drug use history until the time of trial.

The Defendants make three arguments to establish the relevance of Michael Chladek's drug use history to the instant action. First, the Defendants argue that Michael Chladek's drug use background is relevant to show that his perception of the arrest is unreliable. The Defendants contend that Mr. Chladek was

under the influence of drugs at the time of his arrest and therefore his version of the arrest is unreliable. To support their argument, the Defendants offer the Department of Corrections Dispensary Card notes ("Card notes") for September 17, 1996, taken the day of Michael Chladek's arrest. (See Defs.' Mem. of Law in Opp'n at 6; Ex. C.) Medical professionals at Graterford prison treated Michael Chladek the day of his arrest and transcribed notes on a Dispensary Card regarding Mr. Chladek's physical condition. (See Id.) The Card notes indicate that Mr. Chladek was "presently withdrawing from opiate use. Last used this A.M. - 7 A.M." (Id.) Second, the Defendants allege that Michael Chladek's drug use history is relevant to impeach his credibility. The Defendants argue that statements made by Mr. Chladek in response to Parole Agents Milligan and Henry's Interrogatories 15 and 16 conflict with statements made to medical professionals as transcribed in the Card notes. (Id. at 6-7; Ex. C-D.) Finally, the Defendants argue that the evidence is relevant to show that Mr. Chladek's injuries were caused by his long-term drug use rather than by the alleged beating during the arrest. (Id. at 8.)

Although the evidence may be relevant as the Defendants contend, the Court is unpersuaded at this time by the Defendants' argument that "the probative value of evidence of [Michael] Chladek's drug use outweighs any possible prejudice to the jury."

See Fed. R. Evid. 403. The Defendants do not offer any evidence

besides the Card notes that Michael Chladek was indeed under the influence of drugs at the time of his arrest. No evidence has been presented to the Court regarding how such drug use affected Mr. Chladek's "perception" of the arrest, or how long-term drug use affected his overall "health." Expert medical testimony could possibly establish that Mr. Chladek had taken drugs the morning of his arrest, that such drug use adversely affected his "perception" of the arrest and that his injuries were caused by his drug use rather than by the alleged beating. At this time, however, the Court lacks sufficient evidence by which to quantify the probative value of Mr. Chladek's drug use background. Accordingly, the Court reserves judgment upon the admissibility of Michael Chladek's prior drug use history until the time of trial.

**C. Plaintiff Michael Chladek's Criminal and Parole Background**

In the Plaintiffs' third Motion in Limine, the Plaintiffs seek to preclude evidence of Michael Chladek's prior conviction for burglary or parole history." (Pls.' Mot. in Lim. Regarding Michael Chladek's Criminal and Parole Background at 3.) The Plaintiffs argue that Michael Chladek's criminal history and parole background are irrelevant to the charges brought against the Defendants, or in the alternative, such evidence is facially prejudicial and of no probative value. This Court will deal with evidence of Michael Chladek's criminal and parol history separately.



## **1. Michael Chladek's Conviction for Burglary**

The Defendants correctly argue that Michael Chadlek's burglary conviction satisfies the requirements of subdivision 2 of Federal Rule 609. The crime of burglary has been held in this Circuit to involve dishonesty. Bianco, 419 F. Supp. at 509 ("dishonesty" was understood to "include the crimes of armed robbery and breaking and entering"); as has larceny, Remco, 388 F.2d at 786 (recognizing that "larceny . . . involves moral turpitude").

The Plaintiffs wrongfully argue, in the alternative, that such evidence is facially prejudicial and of no probative value. See supra Part II.A.3.a. Because Michael Chladek's burglary conviction falls within the ambit of 609(a)(2), this Court "[has] no discretion to exclude [such] evidence . . . when used for impeachment purpose." Bianco, 419 F. Supp. at 509 (citing Gordon v. United States, 383 F.2d 936 (D.C. Cir. 1967)). Accordingly, the Plaintiffs request to preclude the Defendants from presenting any evidence of Michael Chadlek's prior conviction for burglary is denied.

## **2. Michael Chladek's Parole Background**

In the present matter, the Defendants argue that evidence of Michael Chladek's parole history is relevant because "the arrest that is subject of this lawsuit involves Michael Chladek's latest parole violation." (Defs.' Mem. of Law in Opp'n at 4.) The

Defendants contend that contrary to the Plaintiffs' allegations, Michael Chadlek was lawfully arrested for violating his parole. They further allege that Michael Chadlek resisted arrest, and only reasonable force was used to subdue him. The Defendants advise the Court that "in order to maintain a proper defense to this case, the Parole Agents need to introduce evidence that Michael Chladek was arrested for violating his parole and that he and his mother were aware of parole procedures at the time of his arrest." (Id.) The Defendants further contend that evidence of Michael Chladek's parole background will not prejudice the jury. (Id.)

This evidence is relevant, because, it clearly and convincingly shows that the Plaintiff Michael Chadlek has knowledge of parole procedures and rules, as does his mother, Plaintiff Marie Chadlek. Thus, the evidence, would make it more probable that if the Plaintiffs were not cooperating with the state parole agents, it was not done so out of ignorance. See United States v. Martinez, 465 F.2d. 79, 82 (2nd Cir. 1972) (evidence that a defendant had knowledge of the identity of the agents was proof that he resisted arrest).

Moreover, this Court finds that the Plaintiffs would not suffer any undue prejudice from the introduction of this evidence. The evidence will not mislead the jury, nor confuse the issues. The Plaintiffs failed to articulate how such probative value was substantially outweighed by unfair prejudice so as to preclude

admission. Fed. R. Evid. 403, 404(b). Accordingly, the probative value clearly outweighs any prejudice to the Defendants, and, thus, the Plaintiffs' Motion in Limine Regarding Michael Chladek's Parole Background is denied.

An appropriate Order follows.

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

MICHAEL B. CHLADEK and  
MARIE CHLADEK

v.

DAVID MILLIGAN, et al.

: CIVIL ACTION  
:  
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:  
:  
: NO. 97-0355

O R D E R

AND NOW, this 22nd day of October, 1998, upon consideration of the Plaintiffs' Motions in Limine Regarding the following: Criminal and Parole Background of George Chladek, Sr., George Chladek Jr., and Joseph Davis (Docket No. 69), Michael Chladek's Drug Use History (Docket No. 70), and Michael Chladek's Criminal and Parole Background (Docket No. 71); and the Defendants' response thereto (Docket No. 72), IT IS HEREBY ORDERED that the Plaintiffs' Motions are **DENIED in Part and GRANTED in Part.**

IT IS FURTHER ORDERED that:

(1) the Court has DENIED as moot the Plaintiffs' motion regarding the criminal and parole background of George Chladek, Sr.;

(2) the Defendants SHALL BE PRECLUDED from offering evidence of the criminal and parole records of George Chladek, Jr.;

(3) the Defendants SHALL BE ALLOWED to offer evidence of Joseph Davis's conviction for theft and parole background for the purposes of impeachment;



(4) the Court has RESERVED JUDGMENT upon the admissibility of evidence of Michael Chladek's drug use history until the time of trial;

(5) the Defendants SHALL BE ALLOWED to offer evidence of Michael Chladek's conviction for burglary for purposes of impeachment; and

(6) the Defendants SHALL BE ALLOWED to offer evidence of Michael Chladek's parole background for the purpose of showing that the Plaintiffs had knowledge of parole procedures and rules.

BY THE COURT:

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HERBERT J. HUTTON, J.